

Aventure Communication Technology, LLC
Presentation to Wireline Competition Bureau
and Pricing Policy Division
Federal Communications Commission



Presented by

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Company Overview

➤ **Aventure Communication Technology, LLC:**

- Has deployed Wi-MAX-based wireless broadband networks in farming communities in Northwest Iowa.
- 220 residential and business customers of local and long distance telephone service and Internet.
- Provides full-service VoIP telephone service and hosted IP-PBX functions on a regulated basis.
- Provides wireless broadband Internet access ubiquitously across its networks.
 - 1 Mbps to residential users, 2 Mbps to business users – fully synchronous.
- Aggressive business plan called for construction of 5 networks in Iowa, South Dakota, Nebraska – delayed because of IXC campaign of self-help refusals to pay access charges.

The Dispute

- **Allegations of “access stimulation” or “traffic pumping”:**
 - Rural LECs that terminate traffic to conference, chat line, and sometimes international operators.
 - AT&T, Qwest, Verizon/Verizon Wireless/MCI, Sprint, Embarq started withholding payment of all access charges to LECs they deemed “traffic pumpers” in 2006.

The Commission Has Rejected Arguments Against Rural Chat/Conference Services Four Times

- ***AT&T Corp. v. Jefferson Tel. Co.*, 16 FCC Rcd 16130 (2001).**
- ***AT&T Corp. v. Frontier Commc'ns. of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002).**
- ***AT&T Corp. v. Beehive Tel. Co.*, 17 FCC Rcd 11641 (2002).**
- ***Qwest Commc'ns. Corp. v. Farmers & Merchants Mut. Tel. Co.*, 22 FCC Rcd 17973 (2007).**

2001 Regulatory Scheme – Collection Actions w/o Referrals

- “[W]e conclude that CLEC access rates will be conclusively deemed reasonable if they fall within the safe harbor that we have established. Accordingly, an IXC that refused payment of the tariffed rates within the safe harbor would be subject to suit on the tariff in the appropriate federal district court, **without the impediment of a primary jurisdiction referral to this Commission to determine the reasonableness of the rate.** Similarly, because of the conclusive presumption of reasonableness that we accord to tariffed rates at or below the benchmark, a CLEC with qualifying rates will not be subject to a section 208 complaint challenging its rates.”
- *Access Charge Reform*, 7th Report and Order, 16 FCC Rcd 9923, 9948 ¶ 60 (2001) (emphasis added).

The 2001 Regulatory Scheme Has Failed – Court Referrals

➤ Despite FCC rules, 3 pending referrals

- 7 cases in S.D. Iowa, stayed since February 2007, as judge awaits final order on reconsideration of *Qwest v. Farmers and Merchants*.
- March 16, 2009: S.D.N.Y. collection action in *All Am. Tel. Co. v AT&T* referred one AT&T counterclaim; MDRD gave AT&T approval to file Formal Complaint; WCB-PP refused to put Petition for Declaratory Ruling out for comment.
- July 15, 2009: The judge in *Tekstar v. Sprint* (D. Minn.) referred the *Tekstar* collection action in its entirety to the Commission.

➤ **MORE TO COME**

Regulatory Scheme – Stopping “No Pay” Self Help

- **“Reacting to what they perceive as excessive rate levels, the major IXC’s have begun to try to force CLECs to reduce their rates. The IXC’s primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services. Thus, Sprint has unilaterally recalculated and paid CLEC invoices for tariffed access charges based on what it believes constitutes a just and reasonable rate. AT&T, on the other hand, has frequently declined altogether to pay CLEC access invoices that it views as unreasonable. We see these developments as problematic for a variety of reasons. We are concerned that the IXC’s appear routinely to be flouting their obligations under the tariff system. Additionally, the IXC’s attempt to bring pressure to bear on CLECs has resulted in litigation both before the Commission and in the courts. And finally, the uncertainty of litigation has created substantial financial uncertainty for parties on both sides of the dispute. This uncertainty, in turn, poses a significant threat to the continued development of local-service competition, and it may dampen CLEC innovation and the development of new product offerings.”**
- *Access Charge Reform*, 7th Report and Order, 16 FCC Rcd 9923, 9932 ¶ 23 (2001) (emphasis added) (footnotes omitted).

Regulatory Scheme – Stopping “No Pay” Self Help (cont’d)

➤ **This Commission has ruled at least 11 times against self-help refusals to pay access charges.**

- The line of cases dates from 1976 to the present.
- It includes statements in Rulemaking Proceedings, Declaratory Rulings, and Formal Complaint decisions.

➤ **Despite this consistent line of rulings, the IXC's have successfully conducted a campaign of self-help against a small number of rural LECs for over three years, and counting.**

The 2001 Regulatory Scheme Has Failed – Self Help

- **Currently, all of the major IXC's are engaged in self-help, and there are at least 15 federal district court collection actions pending.**
- **AT&T, Qwest, Verizon/Verizon Wireless/ MCI, Sprint have been withholding payment of all access charges to ILECs for three years.**
- **Procedural delays in court proceedings mean that some cases won't conclude for at least 2 - 3 more years.**
- **This is pure abuse of process – the IXC's cite no precedent for the relief they request.**
- **This is only about rates: AT&T, Verizon have settled with over a dozen LECs, and readily pay – once they get the rates they want.**

The Courts and Industry Require FCC Leadership

- **Currently, at least 20 federal court cases pending (15 LEC collection actions, 5 IXC complaints, 3 referrals).**
- **Additional litigation has begun to spin off these disputes, as IXCs start to withhold access payments from transport providers and aggregators, and any LEC that realizes significant traffic growth.**
- **IXCs are forcing resellers to pay grossly inflated prices (30¢ +) for traffic to rural areas.**

FCC Leadership Required Now to Prevent Inconsistent and Unreasonable Rulings

- **“The Court concludes that the potential for inconsistent or contradictory rulings is great in this case because the FCC currently has under consideration several different matters that address the same or similar issues. . . . The Court further concludes that resolution of the present [collection] action would require consideration of matters best entrusted in the first instance to the FCC’s expertise and experience.”**
 - Judge Joan N. Ericksen, *Tekstar Commc’ns., Inc. v. Sprint Commc’ns., Co., L.P.*, Civil No. 08-1130 (D. Minn.) (July 15, 2009).

FCC Leadership Required Now to Prevent Inconsistent and Unreasonable Rulings (cont'd)

- **Two diametrically opposed decisions coming out of Iowa Federal District Courts:**
- **Judge Gritzner, Southern District of Iowa:**
 - “On October 2, 2007, before this Court entered a ruling on the pending motions, the FCC issued a decision in [Farmers & Merchants], a case factually similar to the present case, filed by Qwest against Farmers & Merchants Mutual Telephone Co. (Farmers), alleging violations of federal tariffs through a traffic-pumping scheme. . . . However, when the Court discovered Qwest would file a petition for reconsideration before the FCC, the Court vacated the briefing schedule and deferred supplemental briefing until the FCC decided whether to grant Qwest’s petition. . . . The FCC granted Qwest’s petition in January 2008 . . . ; and on February 13, 2008, this court extended its October 31, 2007, Order indicating the Court would defer ruling on the pending motions until the FCC issued its ruling on Qwest’s petition for reconsideration”
 - *AT&T Corp. v. Adventure Commc’ns. Tech. LLC*, No. 4:07-cv-00043, Order, dated Jan. 23, 2009, at 2-3 (citations omitted) (emphasis added).

FCC Leadership Required Now to Prevent Inconsistent and Unreasonable Rulings (cont'd)

- **Two diametrically opposed decisions coming out of Iowa Federal District Courts (cont'd):**
- **Judge Zoss, Northern District of Iowa:**
 - “The defendant has filed a motion . . . to stay this case pending ‘a final non-appealable decision’ from the Federal Communications Corporation [sic] on pending ‘issues pertaining to charges for switched access telecommunications services.’ The plaintiff has resisted the motion. . . The motion is **denied**. *
* * The Farmers and Merchants case has been pending before the FCC for reconsideration for nearly two years. There is no good reason to stay the present case for an indefinite period waiting for the FCC to reconsider a decision that may or may not be helpful in deciding the case.”
 - *Great Lakes Comm’d’ns. Corp. v. Global Crossing Telecomms., Inc.*, No. 5:09-cv-04056, Order, dated Sept. 25, 2009, at 1 (citations omitted) (emphasis added).

The Courts and Industry Require FCC Leadership (cont'd)

- **On September 21, the Iowa Utilities Board issued a Final Order adopting Qwest's arguments against "access stimulation."**
 - As demonstrated in Comments filed by several LECs, the IUB decision is wildly *ultra vires*, rebuffs Commission precedent, and is patently wrong on the law.
 - The Commission is hearing petitions to stay the IUB Final Order, to issue a Declaratory Ruling circumscribing the IUB's jurisdiction, and petitions to preempt the order in WCB Docket No. 09-152.
 - This open docket could provide an effective procedural vehicle for issuing the type of industry-wide guidance we are requesting.

Relief Requested

- **Stop addressing this dispute through party-specific Formal Complaints.**
- **Respond to the pending referrals from S.D.N.Y. and D. Minn. – and the others that will follow – by issuing a Declaratory Ruling.**
 - Repeat current state of the law:
 - The Commission has never found termination of access traffic to conference/cat operators to be unlawful.
 - Carriers contesting tariffed rates – including those arguing that the tariff does not apply and that the rate for services received should be zero – must challenge the tariff before the Commission.
 - Traffic is either exchange or exchange access, there is no “third” type of traffic.
- **Issue Declaratory Ruling reiterating that IXC’s campaign of self-help refusals to pay access charges violates §§ 201 and 203 of the Communications Act.**